

INFORMATION for DUNBAR Earl of *Selkirk* Defender,

AGAINST

Mr. *John Lamont*, Minister of the Gospel at *Kelton*, Pursuer.

BY Decreet of Modification and Locality, at the Instance of Mr. *James Ferguson*, then Minister of *Kelton*, against the several Heritors of the Parishes of *Kelton*, *Gelston*, and *Kirkcormack*, united into one, The Commissioners for Plantation of Kirks, and Valuation of Teinds, modified three Chalders of Victual, two Parts Meal, and one Part Bear, of *Linlithgow* Measure, and 500 *l. Scots*, as the constant Stipend, together with 40 *l.* for Communion Elements, which they localled upon the several Heritors therein specified, and particularly, upon the Lands of *Netherthird* in the old Parish of *Kirkcormack*, then pertaining to *Gilbert Macwhan*, 5 Bolls of Victual, and 57 *l. 11 s. 8 d. Scots* of Money. But when the Money allocated upon the several Lands is sum'd up, it does far exceed the 500 *l.* of Money modified for the Stipend, even when the 40 *l.* for the Communion Elements is thereto added.

Whether it has been for this Reason, or because that the Decreet had past in Absence, without any proven Rental of the Stock and Teind, or so much as Production of a Rental of the same by the Pursuer, or of the several Possessions of the respective Heritors, from which a Locality could be made out with Justice and Equality, or by any Rule whatsoever, that this Decreet has never been noticed either by Minister or Heritors, the Defender knows not; but so it is, that since pronouncing of the said Decreet, does it appear, that Mr. *James Ferguson* the Obtainer, or any one of his Successors, have levied from the Possessors of *Netherthird*, any more than 6 *l. 5 s.* of Money, which probably was the old Stipend in Use to be paid, before this pretended Decreet of Augmentation, Modification and Locality was obtained, in which the former Use of Payment of the Stipend is referred to.

And it is further to be observed, that this immemorial Use of Payment, in direct Contradiction and Disconformity to the Decreet, does not only obtain with Respect to the Lands of *Netherthird*, but with Respect to Twenty-two of Thirty-six Heritors, the most considerable in the Parishes, the other fourteen small Heritors upon whom no Locality of Victual is laid by the Decreet, continuing to pay their Money Stipend as formerly; so that now by the immemorial Use of Payment, it has not in this Pursuer's Time, who was admitted in the Year 1730, nor in the Time of his Predecessors, appeared that ever one Lippie of Victual Stipend was paid to the Ministers of this Parish, either before or after this pretended Decreet.

For when the Cause came in before my Lord *Balmerino* Ordinary, the Minister was ordered to give in a Condescendence of the Way and Manner in which he has been in Use to receive his Stipend from the several Heritors, which he very readily complied with; and from thence it does appear, that he does receive in Money from the several Heritors (including the 6 *l. 5 s.* for the Stipend of *Netherthird*) the Sum of 688 *l. 17 s. 8 d.* together with 20 Marks for each of the old Glebes of *Gelston* and *Kirkcormack*, besides the competent legal Glebe of *Kelton*, of which he is in the natural Possession, so that this Pursuer, for the present, receives no less than 715 *l. 11 s.* which is far beyond the legal Competency, and even more (abstracting from the Communion Elements) than what is modified to him by the pretended Decreet, which is only 500 *l.* in Money, and three Chalders of Victual, which Victual being converted, at 100 Marks per Chalder, *Linlithgow* Measure, (and 'tis thought, that in these Countries, in the Year 1650, it would not amount to this Rate) the Stipend would only be 700 *l.*

This being the State of the Case, the Defences offered before my Lord Ordinary, with the Answers, his Lordship is to report,

And in the first Place, it was alledged for the Defender that the foresaid Decreet has never taken Place, being null in itself, as without any Proof to Support it, and allocating much more upon the several Heritors, than the Money Stipend amounted to.

2do, The Decreet is perscribed *non utendo*, and the several Heritors, and particularly this Defender have possessed their Lands and Teinds for 40 Years bygone, paying no more than the Sums acknowledged to have been received by the Minister, which as to the Defender's Part, is 6 *l. 5 s. Scots* and no more, so that he is safe by the positive Prescription, which will Presume that some Contract or other

ther has been entered into betwixt the Heritors and Ministers, regulating the Modus of their Teinds, payable by them to the Minister for his Stipend, at least, ay and while some new Decreet of Modification and Locality shall be obtained.

3rdio, This is the rather to be presumed, that not one Peck of Victual is payable by any one Heritor of the Parish, and yet by the Use of Payment in Money from the several Heritors as is admitted by the Pursuer, he has a Stipend of 715 *l.* 11 *s.* which without doubt is a competent legal Stipend. And it is observable that there are several Subjects mentioned in the Decreet of Locality from which the present Incumbent draws nothing; as for Instance. 33 *l.* 6 *s.* 8 *d.* out of the Vicarage of *Kelton* which is a proper Subject of Teind; So that if his Stipend was less than what he is entitled to by Law, it might be thought that it had been more proper for him to have insisted against those who pay nothing, than to endeavour to alter the immemorial Use of Payment, acknowledged to be received by him ever since his Admission, and presumed to be so received *retro* by his Predecessors.

The Pursuer has answered to the 1st, " That he is not bound to account for the Indistinctness of the Decreet, in localling more than what was modified to the Minister for his Stipend, seeing he insists for no more Money Stipend than 500 *l.* and the Conversion of his 3 Chalders Victual, at 100 *l.* per Chaldar, and if there is any more allocated, the Heritors may proportion the Deduction among themselves, that being nothing of the Pursuer's Concern.

To the 2^d, he answers " That the negative Prescription is interrupted by two several Hornings on the Decreet, one in the 1698, and the other in the 1714; and that the Ministers have possessed disconform, may be owing to Money being paid instead of Victual, which would never alter the Decreet once lawfully established, seeing, notwithstanding of such Use of Payment, he still can recur to the Decreet.

To the 3^d, " He receives only 688 *l.* 17. 4 *d.* according to the present Use of Payment, and as to the 40 Merks for the two Glebes of the other Parishes, that he enjoys *proprio jure*, and therefore it was that tho' the three Parishes were united under the Denomination of the Parish of *Kelton*, before the Decreet of Modification and Locality; these are not by the Decreet imputed in any Part of the Stipend: And as to the Money allocated by the Decreet upon the the Vicarage of *Kelton*, that being so uneasy to recover in small Parcels from several Heritors, it were hard to oblige the Minister to betake himself to that for Part of his Stipend, when there appears so great a Difference, as to what is Payable out of the Teinds of *Netherthird*, betwixt the Decreet of Modification and Locality, and the present Use of Payment, to which Difference the Pursuer has equal Title, as to any other Part of his Stipend."

It was replied for the Defender, That if the Money, immemorially received by the Ministers for their Stipend, did agree with the Money and Victual allocated upon the several Heritors, there might be some Colour for what the Pursuer insists upon, that it was but a temporary and voluntary Conversion of the Bolls (allocated) into Money, for the Conveniency of the Heritor, whose Ground might be mostly in Pasture; but that is not the Case, as may appear from the particulars of the Locality, conform to the Decreet, and the Particulars of the Use of Payment hereto annexed: So that the Use of Payment must have proceeded from some other Cause, and what can be a more probable Cause, than that which the Law presumes from the negative Prescription, That the Decreet has never taken Place; or from the constant immemorial Payment, disconform to the Decreet, that some other Contract or Establishment has past betwixt the Ministers and the Heritors.

For as to the Hornings, it does not appear that ever they have been used, except in the Case of one *Robson*, during the incumbency of Mr. *Falconer*, this Pursuer's Predecessor, and against her indeed, there is in *October* 1724, a Charge, as Relict of a Tenent in *Milhouse*, for 10 *l.* *Sterl.* as Teind resting by her, for Crop 1704, and three Years preceeding, but which surely says nothing as to any Heritor; and there is likewise a Charge against *John* and *James Cavens*, of the same Nature as Tenants, and a third against the Relict of *John Affleck* of *Whitepark*, who indeed was an Heritor; but it is observable, that this Relict is charged for 17 *l.* 12 *s.* as the Stipend payable out of the said Lands, which is indeed conform to the present Use of Payment, but not to the Decreet of Locality, *Whitepark* being there stated as liable in 9 *l.* 15 *s.* and one Boll of Victual; which therefore can never be an Interruption of the negative Prescription of the Decreet of Locality; but shows that the Use of Payment has been the only Rule by which the Minister pretended to exact his Stipend, and which having been paid by the several Heritors, must therefore be the Rule.

In Respect whereof, &c.

JAMES GRAHAM.

STATE of the Difference of the Payment of Stipend of the Parish of Kelton, betwixt the Decreet of Locality, and the Condescendence given in by Mr. Lamont the Pursuer, how the same has been in Ute to be paid; by which it appears, that the Decreet has never been the Rule of Payment, there being so great a Difference both in the Sums and Names of the Lands.

By the Decreet of Locality.						Money. Victual.												
						L.	s.	d.	B.	F.								
Furth of the Lands of						Brought over												
Torrs	-	-	24	7	6	2	2	340	4	4	29	0						
Cauſsyend	-	-	6	12	6	1	2	15	19	0	1	0						
Whitepark	-	-	9	15	0	1	0	42	7	0	5	0						
Carlingwork	-	-	10	00	0	0	0	15	10	0	2	0						
Buchan-croft	-	-	4	00	0	0	0	24	6	8	2	0						
Liggat-croft	-	-	8	00	0	0	0	5	00	0	0	0						
Maynes	-	-	20	00	0	2	0	2	8	8	0	0						
Kelton-Grange	-	-	45	00	0	4	0	4	00	0	6	0						
Slognaw	-	-	21	12	0	4	0	10	3	4	1	0						
Mid-Kelton	-	-	27	00	0	4	0	33	00	0	0	0						
Nether-Kelton	-	-	21	5	0	3	0	8	6	8	0	0						
Dedane	-	-	33	10	0	2	0	4	00	0	0	0						
Bulrig-croft	-	-	4	00	0	0	0	10	00	0	0	0						
Buſh-croft	-	-	4	00	0	0	0	5	00	0	0	0						
Bowhouse-croft	-	-	7	00	0	0	0	14	6	8	0	0						
Hietae-croft	-	-	3	4	0	0	0	7	00	0	0	0						
Vicarage-tiends of Kelton	33	6	8	0	0	0	0	4	00	0	0	0						
Netherthird	-	-	57	11	8	5	0	3	10	0	0	0						
											10	3	4	2	0			
											L. 559				5	8	48	0
											340				4	4	29	0

CONDESCENDENCE for Mr. John Lamont Minister of the Gospel at Kelton, of the Stipend paid him forth of the several Lands lying therein, in Obedience to the Lord Ordinary's Interlocutor thereanent.

				L.	s.	d.					L.	s.	d.
Forth of the Lands of <i>Torrs</i>				42	00	0	<i>West-quarter</i>				-	-	10 00 0
<i>Whitepark</i>	-	-	-	17	12	0	<i>Whitehill</i>				-	-	10 00 0
<i>Cauſsyend</i>	-	-	-	17	12	0	<i>Holm</i>				-	-	4 00 0
<i>Carlingwork</i>	-	-	-	8	00	0	<i>Glenyarrock</i>				-	-	12 00 0
<i>Buchan-croft</i>	-	-	-	4	00	0	<i>Potterland</i>				-	-	5 00 0
<i>Furberligate</i>	-	-	-	8	00	0	<i>Kirkmirran</i>				-	-	7 00 0
<i>Kirktown of Kelton</i>	-	-	-	2	13	4	<i>Glen of Striel</i>				-	-	3 00 0
<i>Mid-Kelton</i>	-	-	-	46	13	4	<i>Kildow</i>				-	-	4 00 0
<i>Halmyre</i>	-	-	-	44	00	0	<i>Newlands</i>				-	-	7 00 0
<i>Mains of Kelton</i>	-	-	-	35	00	0	<i>Summersfield</i>				-	-	4 00 0
<i>Craiglay</i>	-	-	-	13	06	8	<i>Airyland</i>				-	-	25 12 0
<i>Keltonhill</i>	-	-	-	38	00	0	<i>Lochdougans</i>				-	-	64 00 0
<i>Mill and Rhoanhouse</i>	-	-	-	43	00	0	<i>Auchlain</i>				-	-	10 00 0
<i>Dildain</i>	-	-	-	22	00	0	<i>Nether-Arkland</i>				-	-	13 00 0
<i>Boat-croft</i>	-	-	-	3	00	0	<i>Overe-Arkland</i>				-	-	22 00 0
<i>Bilrig</i>	-	-	-	3	00	0	<i>Billies</i>				-	-	18 00 0
<i>Slagnaw</i>	-	-	-	33	06	8	<i>Miln-third</i>				-	-	24 00 0
<i>Little-Ingliftoun</i>	-	-	-	10	00	0	<i>Nether-third</i>				-	-	6 05 0
<i>Meikle-Ingliftoun</i>	-	-	-	13	06	8	Total Amount of what is paid				} 688 17 8		
<i>Boreland</i>	-	-	-	27	00	0	of Stipend, and for Commu-						
<i>Wood of Gelftoun</i>	-	-	-	8	10	0	nion Elements, is						

N. B. Mr. Lamont receives, besides the above Sum, 20 Merks Scots, as the Rent of the Glebe of Kirkcormuck, and 20 Merks for the Glebe of Gelfton; which two Parishes are united with the Parish of Kelton.

Edinburgh, November 14th 1744.

I Mr. John Lamont Minister of the Gospel at Kelton, do hereby declare, that the above Sum of Six hundred and eighty eight Pounds seventeen Shillings and eight Pennies Scots, is the full Amount of what I receive for Stipend and Communion-elements, out of the three united Parishes of Kelton, Gelfton and Kirkcormuck. In Testimony whereof, I have written and subscribed this Declaration, Place and Date aforesaid.

JO. LAMONT.

It is a fact of the difference of the Payment of the Fund of
the Government of the District of Columbia and the Government of
the District of Columbia, how the same has been in the
District of Columbia, that the District has never been the same
as the District of Columbia, and the District of Columbia and
the District of Columbia.

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